



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**

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Application of California-American Water Company (U 210 W) to Decrease Revenues for Water Service in its Coronado District by (\$73,100) or (0.46%) in 2008 and Increase Revenues by \$266,200 or 1.67% in 2009 and \$260,900 or 1.61% in 2010	A.07-01-036
Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Larkfield District by \$1,272,000 or 61.91% in 2008, \$134,300 or 3.94% in 2009 and \$129,900 or 3.67% in 2010 Under the Current Rate Design or Decrease Revenues by (\$742,200) or (36.12%) in 2008 and Increase Revenues by \$50,000 or 3.72% in 2009 and \$63,500 or 4.55% in 2010 Under the Proposed Rate Design	A.07-01-037
Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Sacramento District by \$8,966,900 or 33.89% in 2008, \$1,905,700 or 5.36% in 2009, and \$1,860,700 or 4.97% in 2010 Under the Current Rate Design or by \$10,981,000 or 41.50% in 2008, \$1,925,900 or 5.11% in 2009, and \$1,845,600 or 4.66% in 2010 Under the Proposed Rate Design	A.07-01-038
Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Village District by \$1,537,300 or 7.43% in 2008, \$243,400 or 1.08% in 2009, and \$232,900 or 1.02% in 2010	A.07-01-039

**CALIFORNIA-AMERICAN WATER COMPANY'S  
MOTION TO STRIKE THE OPENING BRIEF OF  
THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

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July 3, 2007

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of California-American Water Company (U 210 W) to Decrease Revenues for Water Service in its Coronado District by (\$73,100) or (0.46%) in 2008 and Increase Revenues by \$266,200 or 1.67% in 2009 and \$260,900 or 1.61% in 2010	A.07-01-036
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**I. INTRODUCTION**

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), California-American Water Company ("California American Water") hereby submits this motion requesting that the Administrative Law Judge strike the document titled *Opening Brief of the Mark West Area Community Services Committee* ("MWACSC"), filed on June 28, 2007 ("Opening Brief"). This motion is being filed concurrently with California American Water's Reply Brief in the above-referenced proceeding.

California American Water moves to strike the MWACSC Opening Brief in its entirety because it introduces new information that is not part of the record, contains expert opinions on topics MWACSC's witness is not qualified to offer expert advice, and makes conclusory opinions that are not supported by the record and are not relevant to this proceeding. Additionally, MWACSC has once again shown its blatant disregard for the Commission's procedures by improperly disclosing confidential settlement communications and submitting information that has already been deemed irrelevant to California American Water's rate case request.<sup>1</sup> In direct contravention to the ruling and admonition by the Assigned Administrative Law Judge that MWACSC must not disclose settlement communications for purposes other than settlement in this proceeding, MWACSC references a proposed settlement allowance in its Opening Brief. Finally, the Opening Brief contains discussions relating to Well No. 6 even though the Administrative Law Judge ruled that Well No. 6 is beyond the scope of California American Water's rate case request.

All parties participating in the Commission's proceedings, whether represented by counsel or not, do so under the rules specified in the Commission's Rules of Practice and Procedure. It would be unfair to effectively change these rules by failing to apply the rules evenhandedly, particularly when this is the second time in the proceeding that MWACSC has violated the same Commission requirement prohibiting the disclosure of information obtained through confidential settlement negotiations.

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<sup>1</sup> On May 4, 2007, MWACSC served testimony which improperly disclosed the substance of the confidential settlement negotiations between DRA, California American Water and MWACSC in this proceeding. In response to the motion filed by California American Water on May 17, 2007 to strike MWACSC's testimony, the Administrative Law Judge ruled to strike portions of the document containing confidential settlement communications and materials going beyond the scope of California American Water's rate case request.

The Commission should strike the MWACSC Opening Brief in its entirety and afford no weight to its unsupported and conclusory opinions. Should the Commission decline to strike the entire Opening Brief, the Commission should at a minimum strike from the record the offending portions of the Opening Brief described below.

## **II. MWACSC'S OPENING BRIEF SHOULD BE STRICKEN IN ITS ENTIRETY**

### **A. The MWACSC Opening Brief is an Improper Attempt to Introduce Information That is Not Part of the Record.**

MWACSC had ample opportunity to present evidence, put on testimony, and cross-examine multiple witnesses in evidentiary hearings with California American Water and the Division of Ratepayer Advocates (DRA) before this Commission on June 4, 2007 through June 6, 2007.<sup>2</sup> Notwithstanding these opportunities to present and dispute evidence in this proceeding, MWACSC now seeks through its Opening Brief and long after the evidentiary hearing has ended to supplement the record with information that is not part of the record and has not been subject to cross examination. MWACSC's attempt to rely upon this non-record information is wholly inappropriate and should not be tolerated by this Commission. California American Water therefore moves to strike the MWACSC Opening Brief because it attempts to improperly introduce information that is not part of the record.

It would be nearly impossible to enumerate each instance of MWACSC's use of information that is not part of the record; instead, California American Water highlights some of the most egregious portions of the Opening Brief:

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<sup>2</sup> Although MWACSC did not attend the evidentiary hearing held on June 5, 2007 MWACSC were provided ample opportunity to conduct cross-examination of witnesses in this proceeding and its representatives questioned several California American Water witnesses during two of the three days of evidentiary hearing.

By way of example, at pages 6 through 8 of its Opening Brief, MWACSC provides its own recalculations to California American Water's General Order 103 analysis. Although MWACSC failed to perform its own General Order 103 analyses of the Larkfield District water supply needs, MWACSC attempt to now supplement the record with these calculations. If MWACSC was interested in conducting an analysis of the water supply under the requirements of General Order 103, it was free to do so. It did not do so. This analysis is not part of the record. It would be grossly unfair to allow MWACSC to introduce this information now when California American Water had no opportunity to test this information through cross-examination.

Another example is found at pages 8 and 9 of the Opening Brief, where MWACSC attempts to introduce its own revised pumping rates for California American Water's four current wells in the Larkfield District. MWACSC had the opportunity to present evidence regarding California American Water's 2004 Operations Plan prior to and during the evidentiary hearing, but chose not to. Instead, MWACSC offers untested testimony that California American Water's pumping rates can be decreased during certain periods and that California American Water should modify its 2004 Operations Plan to address its water supply deficit. MWACSC cannot now be allowed to introduce information that is not already part of the record. The fact that MWACSC chose not to address these issues prior to or at the evidentiary hearing does not change the fact that a post-hearing brief is not the proper forum to introduce new evidence regarding Applicant's case. MWACSC did not take the opportunity to introduce this evidence in its opening testimony and has waived its right to do so now.

Moreover, the MWACSC Opening Brief contains information that is not part of the record that could have easily been included in the testimony MWACSC sponsored on May 4,

2007. An example of this is on page 11 of the Opening Brief where MWACSC describes the type and quality of construction of homes in Larkfield. Similarly, on page 14, MWACSC contends that “the water purchased from the Sonoma County Water Agency is treated water and does not pass through the Treatment Plant.” Again, this and other information that is not part of the record should be stricken.

**B. MWACSC Overtly Violated the Commission’s Rules by Disclosing in Its Opening Brief Confidential Information Obtained through Settlement Negotiations.**

Despite the clear admonishment to MWACSC and its representatives not to introduce, mention or refer to any evidence obtained as a result of the settlement discussions in this proceeding for any purpose other than settlement, MWACSC has once again included information from settlement negotiations between DRA, California American Water and MWACSC in this proceeding. This is the second time MWACSC has submitted a document improperly disclosing confidential settlement communications, in overt violation of the Commission’s Rules of Practice and Procedure.

Through the course of this proceeding, representatives for California American Water, DRA and MWACSC have met on numerous occasions for settlement negotiations regarding the Larkfield and Sacramento Districts. At the beginning of each meeting, counsel for California American Water stated that all matters discussed at the meeting were confidential pursuant to Rule 12.6 of the Commission’s Rules of Practice and Procedure. Despite the fact that representatives from MWACSC attended these negotiations and agreed that all settlement communications are confidential and not to be used for any purpose other than settlement,

MWACSC flagrantly violates the Commission's rules and discloses confidential settlement communications in its Opening Brief.<sup>3</sup>

MWACSC's blatant disregard for the Commission's rules governing the confidential treatment of settlement negotiations runs throughout its Opening Brief. For example, MWACSC repeatedly refers to the proposed settlement allowance for the implementation of the Urban Water Conservation Council's (UWCC) Best Management Practices (BMP). In addition to the fact that it is wholly inappropriate to disclose the contents of the confidential settlement proposal, this information is not part of the record. As such, the sections of the MWACSC referencing the settlement position on the UWCC BMP's should be stricken as they offend the very purpose of settlement negotiations. MWACSC will have the opportunity to thoroughly address any concerns it has with the settlement agreement in the comments and reply comments to the settlement agreement.

Additionally, MWACSC's attempt to introduce information discussed during negotiations in the prior settlement negotiations regarding the North Wikiup Tank No. 2 is wholly improper.<sup>4</sup>

In sum, the repeated offense of disclosing the contents of confidential settlement negotiations raises grave concerns about the credibility of the MWACSC Opening Brief and brings into question MWACSC's motive in this proceeding. The Commission should strike this

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<sup>3</sup> California law is clear that settlement communications are inadmissible evidence based upon the strong public policy in favor of settlement discussions and the integral role that confidentiality plays in the settlement process. (See Rule 12.6; Evid. Code § 1119.)

<sup>4</sup> MWACSC Opening Brief, p. 14 (claiming that "[a]t no time during the discussions and negotiations in that rate case was it revealed that the tank was proposed...").

portion of the Opening Brief to the extent that MWACSC relies upon negotiations from this or prior rate cases.

**C. The Commission Should Strike MWACSC's Expert Opinions Because MWACSC's Witness is a Non-Expert Who is Not Qualified to Offer Expert Advice.**

The MWACSC Opening Brief contains numerous expert opinions on topics MWACSC's witness is not qualified to offer expert advice. One example is MWACSC's criticisms of California American Water's engineering design of the North Wikiup Tank No. 2. The opinions of MWACSC's witness should be given no weight because he has no expertise in the complex seismic and environmental issues involved in the North Wikiup Tank No. 2.

MWACSC also opines at great length on the effects of conservation efforts on the water supply deficit in the Larkfield District, but MWACSC's witness showed no qualifications whatsoever to be deemed an expert on such issues.<sup>5</sup> MWACSC's attempt to counter the conclusions of Mr. David Morse, a water conservation expert retained by California American Water, that estimates of the projected water savings should not be relied upon for water supply planning purposes because they are not reasonably accurate.

MWACSC's limited knowledge of the water planning conducted by California American Water in the Larkfield District hardly gives rise to MWACSC's witness being able to provide expert opinions on how California American Water should modify the operation of its wells, for example. Again, the opinions rendered by a non-expert about the technical planning analysis for California American Water's water supply with no experience in water supply planning and hydro geological conditions have little or no value in this proceeding.



**D. MWACSC Addresses Issues That are Outside the Scope or Irrelevant.**

In its Opening Brief, MWACSC addresses issues that have already been determined to be outside the scope or are no longer relevant to the proceeding. For example, the MWACSC Opening Brief discusses Well No. 6 even though the Administrative Law Judge already ruled that such information is irrelevant given that California American Water has withdrawn this project from its rate case request.<sup>6</sup> Thus, the section in the MWACSC Opening Brief (p. 11) discussing Well No. 6 project is not responsive to California American Water's rate request, is beyond the scope of the proceeding, and confuse the pertinent issues in the proceeding, and thus should be stricken.

Additionally, the settlement agreement adopted in the prior general rate case (A.04-04-040, A.04-04-041, A.04-08-013), which the parties voluntarily accepted, has no relevance to California American Water's request in this proceeding and is not binding upon the Commission in this proceeding. Thus, MWACSC's discussion of MWACSC's conservation efforts as a result of that adopted settlement should be stricken. (*See* MWACSC Opening Brief, p. 9 (claiming that MWACSC included certain conservation efforts as a part of the settlement agreement in the prior rate case).) Similarly, MWACSC's attempt to re-litigate the prior general rate case by entering evidence that was part of that proceeding should be excluded from consideration. (*See* MWACSC Opening Brief, p. 11 (citing Exh. 33, Exhibit E (correspondence

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(...continued)

<sup>5</sup> RT 521:25-522:8 (Bouler/MWACSC).

<sup>6</sup> In the Supplemental Direct Testimony of Rodney L. Jordan (Exh. 15) and the Direct Testimony of Thomas Glover (Exh. 14), served on April 20, 2007, California American Water withdrew its request for the Sutter Well and Well #6 projects.

from August 2005 in the prior rate case regarding “will serve” letters in the Larkfield District).)

Such information is outdated and no longer relevant.

**E. MWACSC’s Opening Brief Relies on Opinions Rather than the Facts in This Proceeding.**

MWACSC submitted a document consisting of opinion, speculation and conjecture, rather than facts and evidence supporting its position. The MWACSC Opening Brief is replete with statements such as “We believe that...,” “We do not oppose...,” “We do not believe that...” and “It is the position of the MWACSC...”<sup>7</sup> Notably missing from the Opening Brief are references to evidence supporting MWACSC’s opinions.

No facts or evidence are presented to support MWACSC’s claims that California American Water will have sufficient water to meet current customer demands and that California American Water can eliminate the need for any new sources of water. Additionally, MWACSC’s claim that the North Wikiup Tank No. 2 may fail in a seismic event is not supported by factual evidence and is highly speculative. MWACSC asserts “[w]e do not believe the safety of this tank and particularly the safety of residences below the tank have been given due consideration by California American Water.”<sup>8</sup>

The MWACSC Opening Brief also contains a number of conclusions regarding the effects of conservation on the water supply deficit in the Larkfield District that amount to nothing more than speculation that is unsupported by any record evidence. For example,

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<sup>7</sup> MWACSC Opening Brief, pp. 5, 9, 12, 15.

<sup>8</sup> MWACSC Opening Brief, p. 15.

MWACSC opines that conservation can be used to reduce water supply needs during peak demand, but fails to provide any credible explanation the estimates are reasonably accurate.<sup>9</sup>

### III. CONCLUSION

For the foregoing reasons, California American Water requests that the MWACSC Opening Brief be stricken in its entirety and afforded no weight. Should the Commission decline to strike the entire MWACSC Opening Brief, California American Water requests that the Commission at a minimum, strike the offending portions of the Opening Brief described in this Motion.

Dated: July 3, 2007

Respectfully submitted,

By: s/ Sarah E. Leeper

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<sup>9</sup> MWACSC Opening Brief, p. 10.

## PROOF OF SERVICE

I, Michelle Chavez, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is STEEFEL, LEVITT & WEISS, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On July 3, 2007, I served the within:

***California-American Water Company's Motion to Strike the Opening Brief of the Mark West Area Community Services Committee***

on the interested parties in this action addressed as follows:

***See attached service list***

- ☒ **(BY ELECTRONIC SERVICE)** By transmitting an electronic notice of the availability of such document(s) on a FTP (file transfer protocol) site electronically from Steefel, Levitt & Weiss, San Francisco, California, to the electronic mail addresses listed below. I am readily familiar with the practices of Steefel, Levitt & Weiss for transmitting electronic mail. Said practice also complies with Rule 1.10 of the Public Utilities Commission of the State of California and all protocols described therein.
- ☒ **(BY PERSONAL SERVICE)** By causing such envelope to be delivered by hand, as addressed by delivering same to **SPECIALIZED LEGAL SERVICES** with instructions that it be personally served.
- ☒ **(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Steefel, Levitt & Weiss, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Steefel, Levitt & Weiss for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 3, 2007, at San Francisco, California.

/s/ Michelle Chavez

Michelle Chavez

**SERVICE LIST**  
**A. 07-01-036, A. 07-01-037, A. 07-01-038, A. 07-01-039**  
**Updated 05/09/07**

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